No. 19-1392

In the Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H.,
STATE HEALTH OFFICER OF THE
MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,
PETITIONER,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF THE AUTISTIC SELF ADVOCACY NETWORK AND THE DISABILITY RIGHTS EDUCATION AND DEFENSE FUND AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amicus Autistic Self Advocacy Network ("ASAN") is a national nonprofit led by and for autistic adults. Its members include autistic adults and youth, non-autistic family members, professionals, educators, and friends. Through public policy advocacy, leadership training, and public communications and organizing, ASAN works to create a world in which autistic people enjoy the same access, rights, and opportunities as everyone else.

Amicus Disability Rights Education and Defense Fund ("DREDF") is a national cross-disability law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. It is committed to increasing accessible and equally effective healthcare for people with disabilities and eliminating persistent health disparities and barriers that affect the length and quality of their lives. DREDF's work is based on the knowledge that people with disabilities of varying racial and ethnic backgrounds, ages, genders, and sexual orientations are fully capable of achieving self-sufficiency and contributing to their communities with access to needed services and support.

The interests of ASAN, DREDF, and their members and constituents are implicated in this case because the law at issue places a strict time limit on access to critical reproductive services that effectively

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[1] The parties have filed blanket consents to the filing of amicus briefs in this matter. No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae's pro bono counsel made a monetary contribution intended to fund the brief's preparation or submission.

prohibits many abortions prior to fetal viability – a limitation that uniquely harms persons with disabilities. Depending on their individual circumstances, people with disabilities may have a particular need for more time to weigh their options – due to difficulties in accessing health care services, or a need to determine the potential adverse effects that a disability may present in proceeding with a pregnancy to term, or otherwise to ensure they will have the necessary resources or support to be able to provide and care for a newborn child. As detailed in this brief, the harsh time limits imposed on the right to decide whether to continue or terminate a pregnancy by the law at issue will force many individuals to make that decision before they are ready, or even, as a practical matter, to lose that right altogether. The Court should reject this sweeping assault on the rights of personal autonomy and bodily integrity.

BACKGROUND AND SUMMARY OF ARGUMENT

This case involves a categorical ban on pre-viability abortions performed fifteen weeks or more after the last menstrual period ("LMP") – about *two months* before the viability threshold established by this Court's precedents. *See* Miss. Code Ann. § 41-41-191(3)-(4) (prohibiting abortion "if the probable gestational age" is "greater than fifteen (15) weeks" with gestational age defined to be "calculated from the first day of the last menstrual period of the pregnant woman").[2] It contains narrow exceptions for

[2] As the district court explained, standard medical practice likewise defines gestational age based on the date of the last menstrual period (rather than the date of fertilization, which is *(cont'd)*

circumstances in which an abortion is necessary to save the life of the pregnant person or to prevent "irreversible impairment of a major bodily function," or where the fetus has a "severe . . . abnormality" that would be "incompatible with life outside the womb." *Id.* It contains no other health exceptions, and contains no exceptions for victims of rape or incest.

The ban obviously cannot be sustained under existing law, and petitioners essentially do not bother to argue otherwise. Instead, they are unabashedly defiant of controlling federal constitutional law and contend that this Court should abandon the principle of stare decisis and throw out nearly a half-century of established precedent. Respondents have already ably explained why doing so would strike at the heart of "the liberty protected by the Fourteenth Amendment." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

Amici writes separately to underscore the importance of the "right to physical autonomy," *id.* at 884 – the right at the heart of *Roe v. Wade*, 410 U.S. 113 (1973), and *Casey*, and one of paramount importance to the disability community. People with disabilities have long been denied control over their own bodies, perhaps nowhere more so than in reproductive decision-making. Indeed, just a century ago, this Court declared that society should "prevent those who are manifestly unfit" – i.e., those with disabilities – "from

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generally around two weeks later for individuals with a standard 28-day menstrual cycle). *See Jackson Women's Health Org. v. Currier*, 349 F. Supp. 3d 536, 538 n.1 (S.D. Miss. 2018) ("Dist. Ct. Opn."). Unless otherwise specified, all references to gestational age in this brief are to weeks after the beginning of the last menstrual period.

continuing their kind" by forcing them to be sterilized against their will. *Buck v. Bell*, 274 U.S. 200, 207 (1927). Against that backdrop, the Court's subsequent rulings in *Roe* and *Casey* that *all* pregnant people have a right to make their own choices about whether and how to bring a child into the world marked a critically important victory for the disability community in particular. The dignity of all people with disabilities would be harmed if those precedents were either explicitly overruled or severely weakened.

Amici and their constituents also have much more than a theoretical interest in this case. Physical and psychiatric disabilities can potentially complicate pregnancy, sometimes well after 15 weeks. And people with disabilities face a host of tangible barriers to accessing reproductive health care, including abortion services. As a result, a categorical ban on abortion after 15 weeks would rush them into decisions about whether to terminate a pregnancy, often before they could obtain accurate information about the risks and challenges associated with pregnancy. Inevitably, that would deny some access to abortion altogether, especially those with limited means. And it would likely pressure others into a rushed decision to terminate their pregnancy, or even, in certain cases, preemptive sterilization.

ARGUMENT

I. Upholding the 15-week abortion ban would deny the bodily autonomy of pregnant people.

The statute at issue in this case, Miss. Code Ann. § 41-41-191 (sometimes referred to as "H.B. 1510") categorically bans any abortion, subject to very limited exceptions, at 15 weeks – long before the viability

threshold set by this Court's precedents. As the court below held, and as respondents essentially do not dispute, "an unbroken line" of cases "have established (and affirmed, and re-affirmed) a woman's right to choose an abortion before viability." *Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265, 269 (5th Cir. 2019); *see also, e.g.*, *June Med. Servs., L.L.C. v. Russo*, 140 S. Ct. 2103, 2135 (2020) (Roberts, C.J., concurring) ("right to terminate . . . before viability" "the most central principle of *Roe*") (citation omitted).

Under straightforward principles of stare decisis, that should be the end of the matter. *See, e.g.*, *June Med.*, 140 S. Ct. at 2133 (Roberts, C.J., concurring) ("The question today . . . is not whether [previous cases were] right or wrong, but whether to adhere to [them] in deciding the present case."). But even if the Court were to accept the invitation to throw out a half-century of precedent and consider the issue anew, it should reaffirm the central holdings of *Roe* and *Casey* because they flow inevitably from principles of bodily integrity and autonomy, which are of particular import to the disabled community.

This Court's abortion precedents protect "a realm of personal liberty which the government may not enter." *Casey*, 505 U.S. at 847. That conception of personal liberty includes "personal autonomy and bodily integrity" and therefore imposes "limits on governmental power to mandate medical treatment or to bar its rejection." *Id.* at 857; *see, e.g.*, *id.* at 849 ("limits on a [s]tate's right to interfere with . . . bodily integrity").

This Court has applied the same principles in a host of other contexts as well. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (depending on *Casey*

to strike down anti-sodomy statute and holding that "[l]iberty presumes an autonomy of self that includes freedom of . . . certain intimate conduct"); *Rochin v. California*, 342 U.S. 165, 171-72 (1952) (forced stomach pumping "shocks the conscience" and violates the due process clause); *see generally Albright v. Oliver*, 510 U.S. 266, 272 (1994) ("The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity.").

The liberty interest in bodily autonomy is clearly (indeed, consciously) violated by the categorical abortion ban at issue in this case – as the district court recognized in enjoining the statute. *See* Dist. Ct. Opn., 349 F. Supp. 3d at 545 ("Respecting [a pregnant person's] autonomy demands that this statute be enjoined"). Pregnancy and childbirth impose a substantial toll on the human body, both physically and psychologically. Indeed, they impose a real risk of death – a risk this Court has recognized to be far greater than any risks associated with abortion. *See Roe*, 410 U.S. at 153 (noting pregnancy can cause "[s]pecific and direct harm medically diagnosable"); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2315 (2016) ("Nationwide, childbirth is 14 times more likely than abortion to result in death . . . ."). These risks are higher still for people of color and people with disabilities. *See, e.g.*, Hilary K. Brown, et al., *Association of Preexisting Disability With Severe Maternal Morbidity or Mortality in Ontario, Canada*, 4 JAMA Open 2 (2021); Emily Petersen, et al., Centers for Disease Control, *Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016*, 68 MMWR Morb. Mortal Wkly. Rep. 762 (2019), http://dx.doi.org/10.15585/mmwr.mm6835a3. The

abortion ban at issue in this case forces pregnant people to accept this risk whether they want to or not. As Justice Blackmun cogently explained, "[b]y restricting the right to terminate pregnancies, the [s]tate conscripts women's bodies into its service" and "assumes they owe this duty as a matter of course." *Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part, concurring in the judgment in part, and dissenting in part).[3]

Constitutional protection for bodily autonomy is of vital importance to people with disabilities, because that protection has far too often been denied to them in both reproductive and non-reproductive contexts. Perhaps most notoriously, around 60,000 Americans were forcibly sterilized in state-sanctioned programs to prevent those adjudged to have psychiatric disabilities from reproducing. *See* Paul A. Lombardo, *Three Generations, No Imbeciles: New Light on* Buck v. Bell, 60 N.Y.U. L. Rev. 30, 31 (1985). These programs disproportionately targeted disabled people of color. *See* Alexandra Stern, *Forced sterilization policies in the US targeted minorities and those with disabilities – and lasted into the 21st century*, IHPI News (Sept. 23, 2020), https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lasted-21st. This Court upheld the constitutionality of such programs over a due-process challenge as necessary "to prevent our being swamped with incompetence." *Buck*, 274 U.S. at 207. The Court declared it "better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent

[3] It goes without saying that in most other circumstances – blood and organ donations provide obvious examples – such conscription would be unthinkable.

those who are manifestly unfit from continuing their kind." *Id.*

While never formally overturned by this Court, the reasoning in *Buck* has largely been repudiated. *See, e.g.*, *Klaassen v. Trs. of Ind. Univ.*, No. 1:21-CV-238 DRL, 2021 WL 3073926, at *20 (N.D. Ind. July 18, 2021) (referring to the decision as "infamous" and its reasoning as "chilling"), *mot. for injunction pending appeal denied*, 7 F.4th 592 (7th Cir. 2021). Nevertheless, people with disabilities continue to be denied bodily autonomy in other fundamental ways. In 2004, the Court chronicled "systematic deprivations of [the] fundamental rights" of people with disabilities. *Tennessee v. Lane*, 541 U.S. 509, 524 (2004). These included a host of restrictions targeted specifically at the bodily autonomy of disabled people, including state laws against their marrying, *id.* at 524 & n.8, and "undisputed" reports of "physical[] abuse[and] drugg[ing]" by state officials, *id.* at 525 n.10 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 7 (1981)).

There is a strong relationship between this sordid history of state action against people with disabilities and the abortion restriction at issue in this case. In both situations, the state has singled out a class of people – either disabled or pregnant – to deny them the fundamental right to control their own bodies for allegedly greater social goals. *See* Lombardo, *supra*, 60 N.Y.U. L. Rev. at 33 ("*Buck* is a landmark in the endorsement of intrusive medical procedures as tools to be used for state ends."). The district court rightly recognized as much, linking this legislation to Mississippi's history of involuntary sterilization. Dist. Ct. Opn., 349 F. Supp. 3d at 540 n.22.

Given this history, it is not difficult to imagine the consequences for people with disabilities if this Court overrules or substantially limits its key precedents protecting "intimate and personal choices . . . central to personal dignity and autonomy" safeguarded by the Fourteenth Amendment." *Casey*, 505 U.S. at 851. Such a ruling would strip out a core constitutional basis for protecting the bodily integrity of people with disabilities in a wide variety of contexts beyond the right to choose to obtain an abortion.

One particular example is obvious. The right to bodily integrity recognized in *Casey* and *Roe* protects not only the right of all people to choose to terminate a pregnancy, but also the right of all people to choose to carry one to term. And restricting the former inherently threatens the latter – especially for persons with disabilities, who have long been targeted. As *Casey* warned, "[i]f . . . the woman's interest in deciding whether to bear and beget a child had not been recognized . . . , the [s]tate might as readily restrict a woman's right to choose to carry a pregnancy to term as to terminate it, to further asserted state interests in population control, or eugenics, for example." 505 U.S. at 859. Thus, when, barely more than a generation ago, state officials allegedly coerced a girl thought to have sickle cell trait into sterilization, the Fourth Circuit depended on *Roe's* guarantee of control over "the right of procreation," to reverse a grant of summary judgment to those officials. *Avery v. Cnty. of Burke*, 660 F.2d 111, 115 (4th Cir. 1981); *see also, e.g.*, *In re Guardianship of Moe*, 960 N.E.2d 350, 353 (Mass. App. Ct. 2012) (reversing order of involuntary sterilization and vacating order of involuntary abortion to be performed on person with schizophrenia in

light of "fundamental" "right" to determine "whether to bear or beget a child") (citation omitted).

In short, people with disabilities have long been denied control over their own bodies, in both reproductive and non-reproductive contexts. Decimating core precedents defending bodily integrity would pose unique dangers to them.

II. The 15-week abortion ban would impose especially severe harms on disabled people.

The experiences of amici and their members, constituents, and supporters concretely illustrate how H.B. 1510 poses tangible threats to their reproductive autonomy in a number of ways. First, physical, psychiatric, and developmental disabilities all may impose substantial additional health risks during pregnancy. In many cases, these health risks cannot be adequately evaluated within the 15-week timeframe the statute imposes. And second, persons with disabilities face enormous social barriers to abortion access, which render a 15-week gestational ban especially likely to preclude many persons with disabilities from obtaining abortions.

For both of these reasons, if the statute is upheld, the pregnant members of the disability community, even more so than most pregnant individuals, would be rushed into a decision about whether to seek an abortion without the benefit of important information. The consequences of this rushed decision could take many forms – and could lead to anything from an outright denial of abortion access, to an increase in abortions made without adequate information and time for consideration, or even to preemptive sterilization. And any iteration would compromise the fundamental rights to bodily integrity and self-

determination that this Court's abortion precedents have long protected.

A. An abortion ban at 15 weeks endangers the health of people with disabilities who become pregnant.

H.B. 1510, by categorically prohibiting abortion more than 15 weeks from "the first day of the last menstrual period," Miss. Code Ann. § 41-41-191(3)(f), poses severe and tangible health risks for people with disabilities who become pregnant. Many physical disabilities and chronic health conditions can complicate pregnancy, in ways that render a 15-week gestational ban entirely unworkable. In addition, some psychiatric and intellectual disabilities can make it difficult, if not impossible, to make a fully informed decision about whether to seek an abortion within the first 15 weeks – especially if the pregnancy is not immediately detected. The exceedingly narrow health exception that the statute contains does little to remedy these concerns.

1. A host of physical disabilities and chronic health conditions can lead to health complications incompatible with a 15-week ban.

A 15-week abortion ban is likely to be unworkable for a wide swath of individuals with physical disabilities and other chronic health conditions, who face more complicated pregnancies, frequently including complications that arise after 15 weeks. Examples include diabetes, which increases risks of "spontaneous abortion, fetal anomalies, preeclampsia, fetal demise, macrosomia, neonatal hypoglycemia, and neonatal hyperbilirubinemia, among others," Am. Diabetes Ass'n, *Standards of Med. Care in Diabetes—2018*, 41

Diabetes Care S137, S137 (2018), and epilepsy, which studies have likewise linked to complications including increased risk of death, preeclampsia, premature delivery or rupture of membrane, and chorioamnionitis, Sima I. Patel & Page B. Pennell, *Mgmt. of Epilepsy During Pregnancy: An Update*, 9 Therapeutic Advances in Neurological Disorders 118, 124 (2016). Many of these complications first arise after 15 weeks – some of them, such as preeclampsia essentially uniformly so. And as discussed in greater detail below, the narrow statutory exception for "medical emergenc[ies]," fails to adequately address most of these risks because it applies only where abortion is absolutely "necessary to preserve the life of a pregnant woman" or to avoid "irreversible impairment of a major bodily function." Miss. Code Ann. § 41-41-191(3)(j), (4)(a).

The statute is also unworkable for those with disabilities or chronic health conditions, such as polycystic ovarian syndrome, that cause irregular or abnormally long menstrual cycles. By its terms, H.B. 1510 categorically bans abortion more than 15 weeks after the last menstrual period. *See* Miss. Code Ann. § 41-41-191(3)(f), (4). In someone with a regular four-week cycle, that means the ban takes effect about 13 weeks after fertilization. But detection of pregnancy may be delayed for people who have longer or irregular menstrual cycles – possibly by several weeks. For these individuals, the effect of the Mississippi statute would be to deny access to abortion altogether.

2. Psychiatric and intellectual disabilities may also prevent people from making an informed decision to terminate a pregnancy prior to 15 weeks.

Psychiatric, intellectual, and developmental disabilities can also create special risks during pregnancy, and can prevent those who have these disabilities from making informed decisions about whether to terminate a pregnancy before 15 weeks' gestation.

Among many people with intellectual or developmental disabilities ("I/DD"), especially those who are institutionalized or who cannot track their menstrual cycle without support, pregnancy might not even be detected in time to obtain an abortion within 15 weeks. Thus, they (or their families) may face a disturbing dilemma: run the risk of pregnancy that cannot be terminated, resulting in the substantial physical toll of carrying a pregnancy to term and enduring childbirth, or submit to sterilization to avoid that outcome.

Even when a pregnancy is discovered early on, many people with I/DD would still face profound challenges in making an informed decision before 15 weeks' gestation. Some individuals need more time to make important medical decisions, especially ones with profound life-long consequences. Many times they require support from, or more extensive consultation with, others. A common model is "Supported Decision Making," which allows "people with developmental disabilities . . . to make their own decisions while getting" support from a group of people they know and trust. The Arc, Northern Virginia, *Working With Your Supported Decision Making Team* (Nov.

2020), https://thearcofnova.org/content/uploads/sites/6/2020/11/Working-with-your-SDM-Team-11.10.20.pdf; *see* Jonathan G. Martinis, *Supported Decision-Making: Protecting Rights, Ensuring Choices*, 36 No. 5 Bifocal 107, 109 (2015) ("relationships can be 'of more or less formality and intensity,' including informal support by people who 'speak with, rather than for, the individual with a disability,' formal 'microboard[s] . . . and circles of support'") (endnotes omitted). This model (and others like it) necessarily takes some time and, depending on when pregnancy is discovered, may be impossible to complete in the weeks allotted.

Among those with psychiatric impairments, a fully informed decision may also be impossible prior to 15 weeks' gestation. One reason is that a wide variety of psychotropic medications are discontinued during pregnancy due to the risk of birth defects or other complications. Many of them, however, cannot be discontinued immediately without risking severe withdrawal side-effects. Benzodiazepines, which are commonly used to treat severe anxiety, provide a clear example. "Abrupt cessation of benzodiazepines" can cause "life-threatening" symptoms, Jonathan Brett & Bridin Murnion, *Mgmt. of Benzodiazepine Misuse & Dependence*, 38 Austl. Prescriber 152, 154 (2015), so the medication is generally "taper[ed] . . . over 8-12 weeks," Jennifer Pruskowski, et al., *Deprescribing & Tapering Benzodiazepines #355*, 21 J. Palliative Med. 1040, 1040 (2018). Since many pregnancies are not detected for many weeks post-LMP (four to five weeks at minimum, even for individuals with perfectly regular menstrual cycles who obtain a pregnancy test as soon as they miss a period), most will likely not have even ceased taking the medication before 15 weeks'

gestation. Even those medications that can be discontinued much more quickly may have substantial half-lives, such that blood-levels remain elevated for some time, and they retain at least some therapeutic benefit. Once the effect of discontinuing any medication has been felt after 15 weeks, however, the symptoms can be severe – up to and including suicidal ideation. Such symptoms may be unbearable if they continue for a full pregnancy term. The result is that people with a wide variety of psychiatric disabilities would be compelled to decide whether to carry a pregnancy to term without any understanding of how doing so will affect their mental health over the course of pregnancy or over the longer term – with potentially deleterious or even life-threatening consequences.

3. The emergency health exception is too narrow to mitigate these risks.

The narrow "emergency" exception for maternal health wholly fails to mitigate the physical and psychological risks. As mentioned, the statute contains an exception for "medical emergenc[ies]," which applies only where "necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function," Miss. Code Ann. § 41-41-191(3)(j), (4)(a).

At least two limitations are plain from the text. First, a host of severe injuries fall beyond the statute's scope because they do not reach the level of death or "irreversible" physical impairment. Thus, in the

words of one court that recently enjoined a less-sweeping abortion ban containing a similarly-worded health exception, H.B. 1510 would require an at-risk "woman be denied a[n] . . . abortion until her health condition substantially and inevitably deteriorated." *Hopkins v. Jegley*, 510 F. Supp. 3d 638, 726-27 (E.D. Ark. 2021), *appeal filed*, No. 21-1068 (8th Cir.). This may be especially true for people with disabilities, some of whom may be more susceptible to sudden and unpredictable deterioration of their physical health. In short, the provision allows for "an unnecessary risk of tragic health consequences." *Stenberg v. Carhart*, 530 U.S. 914, 937 (2000).

Second, by its repeated invocation of the word "physical," the statute makes clear that even catastrophic risks to emotional or mental health would not suffice. While carrying a child involves some psychiatric risk for everyone, those with psychiatric disabilities would be especially affected. Such individuals, for example, might suffer acute mental health crises after 15 weeks, especially if, as is frequently the case, they have been required to discontinue medication.[4]

Put simply, many people with disabilities would face severe risks to their physical and mental health without the ability to terminate a pregnancy after 15 weeks, and very few of those risks can be resolved by the narrow emergency exception.

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[4] The precedent that could be set by discounting the mental health of pregnant people could be far-reaching. If the state's interest in protecting fetal life outweighs the interest in the pregnant person's mental health, the state could also, presumably, require that pregnant individuals discontinue psychiatric medications.

B. People with disabilities face additional social barriers to abortion access, which H.B. 1510 would exacerbate.

Even under current law, people with disabilities face a host of unique social obstacles that impede their opportunity to obtain reproductive health care and to choose freely whether to bear children. High rates of poverty among disabled people amplify these obstacles. A categorical ban on abortions starting at 15 weeks would further exacerbate these barriers.

1. People with disabilities face unique obstacles to access to reproductive care.

Regardless of legal regime, people with disabilities face unique challenges accessing reproductive health care, including abortion. A lack of simple physical access to health facilities can cause a host of challenges, beginning with challenges just getting to a clinic. Many people with disabilities, including some of amici's members and constituents, cannot drive for physical, psychological, or neurological reasons – requiring them to depend on a partner, friend, or caregiver for transportation. Those caregivers can be hard to come by, particularly because persons with disabilities are disproportionately likely to be socially isolated. In addition, some people with physical disabilities may not be able to ride in an ordinary passenger car, and may struggle to use public transportation accessible to people without disability. These challenges are especially significant in Mississippi, in which respondent clinic is the sole abortion provider in the state's 48,000 square miles, putting it hours away from many of the state's residents by car, and well outside of local paratransit service on which

many disabled people rely. If people with disabilities can surmount these overlapping mobility challenges, they are more likely to need an advance plan to obtain still further assistance with everything from physically navigating a doctor's office to performing personal tasks, often in a strange city, during the state-mandated 24-hour waiting period.

As a result of these challenges and others, obtaining an abortion with a disability often requires substantial long-term planning that may simply be impossible if this Court allows the challenged statute to go into effect.

2. The disproportionate rate of poverty among people with disabilities further limits timely abortion access.

The fact that so many people with disabilities live in poverty further limits their access to reproductive care, exacerbating the disproportionate harm that H.B. 1510 would impose upon them. Even among the general population, half of all abortions are sought by people below the federal poverty level of less than $12,000 a year. *See* Dist. Ct. Opn., 349 F. Supp. 3d at 542 n.36. And "[p]eople with disabilities live in poverty at more than twice the rate of people without disabilities." Nat'l Council on Disability, *Highlighting Disability/Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities* (Oct. 26, 2017), https://ncd.gov/newsroom/2017/disability-poverty-connection-2017-progress-report-release. Disabled people of color are even more likely to live in poverty. *See* Nat'l Disability Inst., *Financial Inequality: Disability, Race and Poverty in America* (2019), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/

disability-race-poverty-in-america.pdf. The absolute number of disabled people in poverty who may need an abortion is likely especially high in Mississippi, which "has a greater population of poor women that any other state in the country." Dist. Ct. Opn., 349 F. Supp. 3d at 542 n.36. The experiences of amici's constituents further illustrate the point. One, who is autistic and has bipolar disorder, became pregnant immediately after losing a job, and while living on unemployment insurance. Another described her financial situation when she sought an abortion as "paycheck to paycheck."

As the district court recognized, the statute would "disproportionately impact poor women" of all types.[5] Dist. Ct. Opn., 349 F. Supp. 3d at 542 n.36. That is so because poor people are less likely to be able to access reproductive health care, including the care and counseling necessary to determine any health risks associated with carrying a pregnancy to term and to make an informed and prompt decision about whether to do so.

In addition, poor individuals are already disproportionately burdened by existing restrictions on abortion. Unlike many private health insurance plans, neither the Mississippi Medicaid program nor programs purchased using subsidies under the Affordable Care Act in Mississippi are permitted to pay for abortion. *See* Miss. Code Ann. §§ 41-41-91, -95, -97. And no state agency, county, city, or town may use "public funds" to "in any way [provide], to assist in, or to provide facilities for abortion." *Id.* § 41-41-91. As a

[5] In fact, as a practical matter, neither Mississippi nor any other state can prohibit those with the financial means to travel to other states or countries from obtaining an abortion.

result, those least able to do so are most likely to be required to pay out-of-pocket for any abortion care. In addition, Mississippi law already requires a 24-hour waiting period before any abortion. *See id.* § 41-41-33(1). Given that the only clinic in the state is an hours'-long drive from many Mississippi citizens' homes, that means that access to abortion frequently requires the cost of an overnight hotel stay as well.

These costs erect barriers that can be insurmountable for people making as little as a few thousand dollars a year. To the extent they can be surmounted, it may require weeks or months of effort for individuals in this position to save what little they can, to seek gifts or loans from family, friends, or lenders, or to attempt to qualify for financial assistance from a provider or other organization. All this takes time, and provides yet another reason that a 15-week abortion ban would impose unique harms on people with low incomes and on people with disabilities.

C. H.B. 1510 would deny reproductive autonomy to people with disabilities.

Both because of the unique health challenges associated with pregnancies in disabled people and because of the special access challenges they face, banning abortion after 15 weeks would undermine their ability to make a meaningful decision about whether to continue or terminate a pregnancy. They would be forced to make that choice on short notice, and frequently without a full understanding of its physiological, psychological, social, and financial consequences. The results of this high-pressure scenario will be varied – and by no means certain to result in a greater number of pregnancies brought to term. But under any conceivable scenario, the challenged

statute would deny reproductive autonomy and freedom to persons with disabilities.

Some disabled individuals, or their parents or court-appointed guardians in the case of disabled children and some adults, may feel compelled to choose permanent or quasi-permanent sterilization – through tubal ligation, for example – rather than face the possibility of a future unwanted pregnancy in the absence of any choice or control over whether to terminate it. For these individuals, the statute would work a practical return to the dark era of *Buck*, 274 U.S. 200. Specifically, families of disabled people, especially parents of children with intellectual disabilities and of those who are institutionalized, often seek sterilization out of a fear that their child may otherwise become pregnant and be forced to continue with a pregnancy that they do not want or to bear a child that they or lack adequate support to care for. Samuel R. Bagenstos, *Disability and Reproductive Justice*, 14 Harv. L. & Pol'y Rev. 273, 289 (2020). This is no idle concern. People with disabilities can and do become pregnant as a result of consensual sexual activity. But, in addition, they are three-and-a-half times more likely to be sexually assaulted than non-disabled people. *See* NPR, *The Sexual Assault Epidemic No One Talks About* (Jan. 8, 2018), https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about. People with intellectual disabilities are *more than seven times* more likely to be victimized. *See id.* And H.B. 1510 contains no exceptions for victims of rape. *See generally* Miss. Code Ann. § 41-41-191.

Those who do not seek to be sterilized and to preclude the possibility of pregnancy altogether may be forced to make a rushed decision to obtain an abortion

rather than wait to see if complications arise later in pregnancy. As discussed above, individuals with a host of disabilities face increased risks of complications arising after 15 weeks. Should the Court sustain the challenged statute, those individuals would be left with a Hobson's choice. They could seek an abortion before 15 weeks, and preclude the possibility of giving birth to an otherwise-wanted child, or they could carry the pregnancy to term and risk the possibility of injury arising after the first trimester.

Finally, many people with disabilities will as a practical matter be denied access to abortion altogether for the reasons discussed above. Moreover, the consequences of being forced to carry a pregnancy to term may be much more severe for people with disabilities. Pregnancy is always risky, but much more so for those with disabilities that may interfere with the pregnancy itself or with childbirth. Those with psychiatric disabilities also face unique burdens during pregnancy and in raising a child. As noted previously, and as many of amici's members and constituents can attest, doctors often advise or require their patients to avoid or discontinue psychiatric medication for the duration of pregnancy – an emotionally demanding time even in the best of circumstances. Other constituents with mental health disabilities have expressed that they were simply unable to deal with stresses of pregnancy and childbirth. One, who is now a healthy married mother of two with a stable career, became pregnant while suffering from undiagnosed bipolar disorder and believes she might have never obtained appropriate treatment had she carried her first pregnancy to term. More than one of amici's disabled members forthrightly say access to abortion saved their lives.

Regardless of which path disabled people take to deal with a ban on abortion after 15 weeks, they would be required to face the loss of "personal dignity and autonomy." *Casey*, 505 U.S. at 851. People with disabilities, even more than most, would be harmed by "government" intrusion into that "realm of personal liberty" that the Court has protected for more than 48 years. *Id.* at 847. For this reason, in addition to all those reasons ably advanced by respondents' brief, amici urges the Court to reaffirm its established precedent on the right to pre-viability abortion.

CONCLUSION

Amici respectfully requests the Court hold, as it has over and over again, that the Constitution protects a right to choose to terminate a pregnancy until viability, and to affirm the decision below.

Respectfully submitted.

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September 20, 2021